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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,470	05/06/2005	Richard Merken-Schiller	HO-P03099US0	1364
26271 7590 03/20/2007 FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			EXAMINER DURAND, PAUL R	
			ART UNIT 3721	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/20/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/517,470

Applicant(s)

MERKEN-SCHILLER ET AL.

Examiner

Paul Durand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 and 10-30 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 27, the phrase "designed in such a way" is indefinite in that it fails to further limit the claim and attempts to claim the intended use of the intermediate layer.

In claims 1 and 10-12, it is unclear to the examiner, whether the intermediate layer claimed is part of the film, or is a separate device indicated by reference number 25 in figure 8.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1,2,5,6,13,14,15,16,17,19,27,28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sengewald (US 3,593,622) in view of Kreager (US 4,517,790) in further view of Bast (US 4,221,290).

In claims 1,12 and 27, and as the examiner can understand the claim, Sengewald discloses the invention as claimed including manufacturing a tubular structure 10 from at least one film web 11, forming at least one fold in the web 21 and 32, projecting into the tubular structure and joining sections of the film web lying flat and parallel on top of one another (see entire document). What Sengewald does not disclose is the use of an ultrasonic sealer. However, Kreager teaches that it is old and well known in the art to provide a package making device with an ultrasonic sealer 54 for the purpose of efficiently sealing a package prior to filling (see Fig.1 and C4,L11-16). Furthermore, Bast teaches that it is old and well known in the art of packaging to provide an intermediate member layer 104, which prevents the film from web 14 from sealing for the purpose of forming a supplemental filling area on a film (see Figs.6,9 and C6,L18-30).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Sengewald with the sealing means as taught by Kreager for the purpose of efficiently sealing a package prior to filling.

In claim 2, Sengewald discloses the invention as claimed including folding the film longitudinally and joining the lateral edges near the folded web (see Figs. 3,6 and 7).

In claims 5 and 6, Sengewald discloses the invention as claimed including diametrically opposed "W" shaped folds (See Fig. 6).

In claims 13 and 14, Sengewald discloses the invention as claimed including

fusing the film web in the vicinity of the folded edges to form a cross sectional loop (see Figs. 3,6 and 7).

In claim 15, Sengewald discloses the invention as claimed including saw toothed sealing seams (see Fig.1).

In claim 16, the modified invention of Sengewald discloses the invention as claimed including saw toothed sealing seams, What the modified invention of Sengewald does not disclose is design of the seal seams being curved and straight cutting edges. However, it would have been an obvious matter of design choice for the seal seams to be curved and cutting edges straight, since applicant has not disclosed that this configuration solves any stated problem or is for any particular purpose and it appears the invention would do equally well with the saw tooth seams as taught by Sengewald.

In claims 17,19 and 28, the modified invention of Sengewald through Kreager discloses the invention as claimed including guiding the feeding the material obliquely toward a guide roller, advancing and shaping portion 42 and 44 and subsequent sealing (see Kreager Fig.1).

In claim 30, the modified invention of Sengewald discloses the invention as claimed including an ultrasonic welder 54, supported by holder 82 (see Kreager Fig. 1). What the modified invention of Sengewald does not disclose is the use of a supporting table. However, the examiner takes Official Notice that it is old and well known in the art to provide a supporting table or surface to mount a device component for the purpose of increasing access to a product being worked on.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Sengewald with a supporting table for the purpose of increasing access to a product being worked on.

2. Claims 3 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sengewald and Kreager in view of Reynolds (US 3,411,698).

As the examiner can understand the claims, the modified invention of Sengewald discloses the invention as claimed as applied to claims 1 and 27 above, except for the formation of a package from two pieces of film webs placed on top of each other. However, Reynolds teaches that it is old and well known in the art of package making to manufacture a package from two separate pieces of film 25 and 26, which are laid flat on top of each other and sealed by means 41 and 42 for the purpose of manufacturing a package utilizing different materials (see entire document).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Sengewald with the package forming means as taught by Reynolds for the purpose of manufacturing a package utilizing different materials.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sengewald, Kreager and Bast in view of Ausnit (US 6,517,660).

As the examiner can understand the claim, the modified invention of Sengewald discloses the invention as claimed as applied to claims 1, except for the formation of a package from three pieces of film webs. However, Ausnit teaches that it is old and well

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known in the art of package making to manufacture a package from three separate pieces of film, where two pieces 32 and 34 are placed flat on each other and a third film 72, is fixed to a lateral edge for the purpose of forming a gusseted bag (see Fig.1).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Sengewald with the package forming means as taught by Ausnit for the purpose of forming a gusseted bag.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sengewald, Kreager and Bast in view of Brock et al (US 3,967,544).

As the examiner can understand the claim, the modified invention of Sengewald discloses the invention as claimed as applied to claims 1, except for the use of an air nozzle to open the bag during manufacture. However, Brock teaches that it is old and well known in the art of package making to manufacture a package using an air nozzle 98 for the purpose of preventing the bag material from encroaching in the seal area (see Fig.6 and C4,L53-68).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Sengewald with the bag inflation means as taught by Brock for the purpose of preventing the bag material from encroaching in the seal area.

5. Claims 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sengewald, Kreager, and Bast in view of Hightower (US 5,030,189) and in further view of Cantenot (FR 2 587 985).

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As the examiner can understand the claims, the modified invention of Sengewald discloses the invention as claimed as applied to claim 1 above, except for the formation of a seal means utilizing a multilayer film and weakened areas formed by pre punching or scoring a seal area. However, Hightower teaches that it is old and well known in the art of package making to manufacture a package from a film , with a pre-punched continuous weakened tear line 36, formed by ultrasound, being alternatively formed in a curved shape for the purpose of easily opening a formed package (see entire document). Moreover, Cantenot teaches that it is old and well known in the art of package making to form a package utilizing a multi layer film 3 and 4, formed by ultrasonic means for the purpose of forming a package impermeable to a variety of conditions (see entire document).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Sengewald with the weakened area as taught by Hightower and composite package as taught by Cantenot for the purpose of forming a easily opened impervious package.

***Allowable Subject Matter***

4. Claims 10,11 and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

The examiner regrets any inconvenience caused by the new grounds of rejection in view of Bast.

This action is non-final.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Paul Durand  
March 13, 2007